

In the Court of Appeals of the State of Alaska

David Christopher Nordlund,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13607**

Order

Motion to Review Bail Decision

Date of Order: **June 9, 2021**

Trial Court Case No. **3AN-19-04232CR**

The Appellant, David Christopher Nordlund, is currently represented by the Public Defender Agency. That said, he has filed on his own behalf a bail appeal of the superior court's denial of his request for release pending appeal. See Appellate Rule 206(b). Attached to Mr. Nordlund's pro se pleading is an order from the superior court allowing Mr. Nordlund to represent himself for the purposes of the bail appeal.

It is not clear from the record, however, that Mr. Nordlund knowingly and intelligently waived his right to counsel in this bail appeal during the recent proceedings in the superior court. Although Mr. Nordlund may desire to represent himself in the bail appeal, he also has a constitutional right to counsel to assist him in the appeal. Unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction).

For this reason, **IT IS ORDERED:**

1. This bail appeal is remanded to the superior court to clarify whether Mr. Nordlund entered a knowing and intelligent waiver of the right to counsel. If Mr.

Nordlund did enter a valid waiver of the right to counsel, the superior court shall promptly inform this Court that he has done so, and this matter will resume in this Court.

2. If, however, Mr. Nordlund did not enter a knowing and intelligent waiver of the right to counsel, the superior court shall conduct an inquiry to make sure that Mr. Nordlund understands the benefits of counsel and the dangers of representing himself.

3. If, after Mr. Nordlund is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, the superior court shall inform this Court of this circumstance.

4. If, on the other hand, Mr. Nordlund decides not to represent himself, then the superior court shall inform this Court of this circumstance.

5. Because Mr. Nordlund has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to represent himself. Accordingly, if Mr. Nordlund is unable to make up his mind about whether to represent himself, this means that he has *not* waived his right to counsel.

6. If the superior court finds it necessary to conduct the inquiry described in paragraph 2, above, then the superior court's report on that inquiry shall be transmitted to this Court on or before June 24, 2021. If necessary, this deadline may be extended at the request of the superior court. In remanding this case, this Court acknowledges that because of limitations imposed because of the ongoing public health crisis, this hearing may be done telephonically, if possible.

Nordlund v. State - p. 3
File No. A-13607
June 9, 2021

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

cc: Judge Peterson
Trial Court Clerk - Anchorage
David Christopher Norlund

Distribution:

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